therefore, that the proposed exception would violate the principles of the law of evidence.

But it is urged that the practical advantages warrant a departure by act of the legislature from the principles of the past. It is said that time and money will be saved. But first it must be determined what books shall be admitted. Obviously none but specialists can pass upon the standing of specialized writings. Whereas at present experts wrangle as to the correct opinion, the proposed innovation would merely shift the ground of their contention to the correctness of the author. And when one side has proved the qualifications of a learned treatise, nothing is to prevent the party opponent from producing an equally learned work by a dissenting author. Nor does the argument appear sound that the admission of this evidence will make more readily available to the court the latest results of scientific research. A real expert is presumably posted on the latest authorities, and has the additional advantage of being able to act as interpreter. The opinion itself may be based on a treatise, and the actual exclusion of the particular volume deprives the court of little advantage. The strongest practical argument for the exception is perhaps that learned treatises are free from the prejudice so frequently seen in experts. But any advantage seems to be more than counterbalanced by the danger that the way may be opened to confusing the jury either by deliberate mystification or innocent misapprehension in the use of technical excerpts. In short, no advantage seems to suggest itself sufficient to justify an innovation so unwarranted by the present rules of evidence and so liable to practical abuse in the court room.[10]

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THE EFFECT OF A PARDON. — While, as has been often said, a pardon is granted of grace and not of right,[1] it must be assumed in considering its effect that the reason for granting a pardon to-day is not generally the mere personal favor of the pardoning power, but a recognition that the rigid rules of law as to crimes and punishments may fail to effect justice in individual cases. Thus later developments may make it appear that one legally found guilty was in fact innocent, or, if technically guilty, at least morally innocent. In other cases the peculiar physical condition of the guilty man or extenuating circumstances connected with the crime may justify a relief from further punishment.[2] Pardons,

[10] The rule suggested by Professor Wigmore seems to have been adopted by judicial legislation in Alabama. Stoudenmeier *v.* Wilson, 29 Ala. 558, 565; Merkle *v.* State, 37 Ala. 139, 141; Bales *v.* State, 63 Ala. 30, 38; Birmingham, etc. Co. *v.* Moore, 148 Ala. 115, 125, 42 So. 1024, 1028. The Alabama rule appears to have originated from an Iowa case, Bowman *v.* Woods, 1 G. Greene (Ia.) 441, 444. But the doctrine no longer obtains in that state. Bixby *v.* The Omaha, etc. Co., 105 Ia. 293, 75 N. W. 182; Union Pacific R. Co. *v.* Yates, 79 Fed. 584, 588. For jurisdictions where statutes allow the admission of books to prove facts of general notoriety and interest, see WIGMORE, EVIDENCE, § 1693, n. 1, 2.

[1] See Roberts *v.* State, 160 N. Y. 217, 222, 54 N. E. 678, 679; 3 INST. 233.

[2] Sometimes public policy requires that a large body of offenders shall be no longer considered criminals, as, for instance, after the Civil War when a general amnesty was granted to those who had joined in the rebellion.

however, for whatever reason given, are treated alike in effect. Courts of law do not look behind them to see why they were granted in individual cases.

It is clear that a pardon can have no retroactive effect. A pardoned convict can have no redress against the state for penalties already suffered, whether in the form of fine,[3] imprisonment,[4] or forfeiture of office.[5] Having been legally convicted, a man cannot be said to have suffered a wrong from the state, for a pardon is not a determination that a conviction was erroneous.[6] Moreover, being an act of grace toward an individual, a pardon cannot affect the rights of third parties which have vested because of the conviction.[7]

It is clear, however, that a full pardon should not only relieve from all future punishment prescribed for the offense,[8] but from the various disabilities attached either by the common law or by statute to one convicted of the more serious crimes. Thus a pardon will remove a convicted man's disability as a voter, a juror, an executor, a guardian, or a witness.[9] In view of the remission of punishment and the restoration of civil rights it has been often said that a pardon is a remission of guilt, and makes of one convicted a new man with new credit in the eye of the law.[10] The courts are not entirely in harmony, however, as to whether after a full pardon any taint of criminality remains. Were the reasons for granting a pardon open each time to judicial examination, they would have an important bearing in many cases upon the justice of adopting one view or the other. It is well settled that a prior conviction of a witness may be offered in evidence to affect his credibility, although he may have been granted a full pardon.[11] In such a case, even where innocence is the reason for the pardon, no great injustice is done, because this evidence may be rebutted. Another interesting question, more doubtful on the authorities, is raised by a recent New York case. A statute provided that a person once convicted of a felony should suffer an increased punishment for a second offense. The defendant, having been granted a full pardon after a first

[3] Knote *v.* United States, 95 U. S. 149; Cook *v.* Freeholders of Middlesex County, 26 N. J. L. 326.

[4] Roberts *v.* State, *supra.*

[5] State *v.* Carson, 27 Ark. 469.

[6] See Roberts *v.* State, 30 N. Y. App. Div. 106, 109, 51 N. Y. Supp. 691, 693.

[7] Holliday *v.* People, 10 Ill. 214. See *In re* Deming, 10 Johns. (N. Y.) 232. Penalties paid to third parties cannot be recovered. Rucker *v.* Bosworth, 7 J. J. Marsh. (Ky.) 645. An informer still retains his right to be paid any compensation he may have legally earned. Rowe *v.* State, 2 Bay (S. C.) 565.

[8] Osborn *v.* United States, 91 U. S. 474.

[9] Wood *v.* Fitzgerald, 3 Or. 568 (voter); Puryear *v.* Commonwealth, 83 Va. 51, 1 S. E. 512 (juror); *In re* Raynor, 48 N. Y. Misc. 325 (executor); *In re* Deming, 10 Johns. (N. Y.) 232 (guardian); Diehl *v.* Rogers, 169 Pa. St. 316, 32 Atl. 424. See 2 Hale, P. C. 278 (witness).

[10] See *Ex parte* Garland, 4 Wall. (U. S.) 333, 380; *Ex parte* Hunt, 10 Ark. 284, 288; 1 BISHOP, CRIMINAL LAW, § 898. It was early held that a pardoned thief could bring an action of slander for being called a felon. Cuddington *v.* Wilkins, Hob. 81. In saying that a pardon makes of one convicted a new man the courts do not mean that the acts themselves leading up to a conviction are considered legally obliterated. Accordingly an attorney, who has been pardoned after conviction of a felony, may still be disbarred on the ground that his acts resulting in conviction also constituted professional misconduct. In the matter of ——, Attorney, 86 N. Y. 563.

[11] United States *v.* Jones, 2 Wheeler Cr. Cas. 451; Curtis *v.* Cochran, 50 N. H. 242.

conviction, was again convicted of a felony. The court held that he must suffer the increased statutory penalty. *People* v. *Carlesi*, 139 N. Y. Supp. 309 (Sup. Ct., App. Div.). The opposite result seems to have been reached in all but one of the other jurisdictions where the question has arisen.[12] The reason for statutes providing increased punishment for second offenders is the greater criminality attaching to one who repeats an offense.[13] The New York court recognizes the continuing existence of a criminal taint in spite of the pardon. Since no discretion is allowed by the New York statute in imposing the increased penalty, injustice might result if the pardon were based on innocence.[14] It is submitted that the power to pardon should be broad enough completely to remove all taint of guilt. To have a lesser effect a pardon should be limited in terms.

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TORT LIABILITY FOR BREACH OF CHILD-LABOR STATUTE. — The increasing number of child-labor laws in this country lends interest to a recent Alabama case under such a statute. A child employee was allowed to recover from the defendant employer damages for personal injuries although he obtained employment by falsely representing that he was above the statutory age. *De Soto Coal, Mining, & Development Co.* v. *Hill*, 60 So. 583 (Ala.). The statute in this case was peculiar in merely forbidding the employment of children under fourteen, without providing a penalty. Since the statute is not effective as a criminal statute, it seems that the legislature, in forbidding one class of persons to do affirmative acts affecting another, must have intended to create a civil liability to children employed.[1]

In determining the exact limits of a right of action given in such general terms, the purpose of the legislature must be examined in order to decide what type of civil liability it is intended to impose. It seems that liability should not be confined to cases where the plaintiff's youth is the cause of his injury,[2] since the purpose of such a statute is to protect children from all the dangers of the prohibited employment.[3] As a

[12] Edwards *v.* Commonwealth, 78 Va. 39; State *v.* Martin, 59 Oh. St. 212. See Commonwealth *v.* Morrow, 9 Phila. 583. *Contra*, Commonwealth *v.* Mount, 2 Duv. (Ky.) 93.

[13] See People *v.* Sickles, 156 N. Y. 541, 547; People *v.* Craig, 195 N. Y. 190, 88 N. E. 38.

[14] The only relief in such a situation, if the view of the New York court is adopted, would be a possible second act of grace in reducing the sentence.

[1] Where a statute provides only a penal liability for its breach, a civil right can scarcely be given by construction of the words. It seems rather that the courts in substance are creating a new cause of action because they recognize the policy which lies behind the criminal statute. See 26 HARV. L. REV. 531.

[2] There must always be causal connection between the act forbidden and the injury. See Queen *v.* Dayton Coal & Iron Co., 95 Tenn. 458, 464, 32 S. W. 460, 461; Inland Steel Co. *v.* Yedinak, 172 Ind. 423, 432, 87 N. E. 229, 233. But the employment of the child is legal cause of damage incidental to such work. Third Vein Coal Co. *v.* Dielie, 110 Ill. App. 684; Iron Mountain R. Co. *v.* Dies, 98 Tenn. 655, 41 S. W. 860; Starnes *v.* Albion Mfg. Co., 147 N. C. 556, 61 S. E. 525; Lenahan *v.* Pittston Coal Co., 218 Pa. St. 311, 67 Atl. 642.

[3] Rolin *v.* Reynold's Tobacco Co., 141 N. C. 300, 53 S. E. 891; Third Vein Coal Co. *v.* Dielie, *supra*.